HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

1. Income Tax Appeal No. 69 of 2002

2. Income Tax Appeal No. 70 of 2002

3. Income Tax Appeal No. 71 of 2002

Date of Decision : 2nd December, 2005

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date

Initial of Judge.

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Income Tax Appeal No. 69 of 2002

1. The commissioner of Income Tax, Dehradun
2. The Income Tax Officer (TDS), Dehradun,

..... Appellants

Versus

The Chief Officer
Zonal Officer
State Bank of India,
52, Rajpur Road, Dehradun.

..... Respondent

(2) Income Tax Appeal No. 70 of 2002

1. The commissioner of Income Tax, Dehradun
2. The Income Tax Officer (TDS), Dehradun,

..... Appellants

Versus

The Chief Officer
Zonal Officer
State Bank of India,
52, Rajpur Road, Dehradun.

..... Respondent

AND

(3) Income Tax Appeal No. 71 of 2002

1. The commissioner of Income Tax, Dehradun
2. The Income Tax Officer (TDS), Dehradun,

..... Appellants

Versus

The Chief Officer
Zonal Officer
State Bank of India,
52, Rajpur Road, Dehradun.

..... Respondent

Sri S.K. Posti, learned counsel for the appellants,
Sri D.S. Patni, learned counsel for the respondent.

Date : 02.12.2005

Hon'ble P.C. Verma, J.
Hon'ble J.C.S. Rawat, J.

[Per : Hon'ble J.C.S. Rawat, J.]

Since similar points of dispute are involved in all these appeals, therefore, they are being disposed of by this common order.

2. These appeals have been filed by the appellants against the common order passed by learned Income Tax Appellate Tribunal, Delhi Bench 'C' Delhi **(In short ITAT)** dated 01.08.2001 in T.D.S. Appeal No.47 (Del)/95, T.D.S. Appeal No. 80 (Del)/95 and T.D.S. Appeal No.28 (Del)/95 respectively. All these appeals are relating to assessment years 1991-92 and 1992-93. By the said impugned order the learned ITAT had confirmed the findings of the Commissioner of Income Tax (Appeals), Dehradun (**in short CIT (Appeals**), by which the appeals were decided in favour of the assessee.

3. Brief facts are that the assessing authority on scrutiny of annual return of salaries filed by the assessee before the Assessing Officer noticed that many of the employees were not paid house rent allowance whereas some were paid. On being made the inquiries it was revealed that the assessee had failed to add the perquisites value of rent free accommodation and the value of other amenities which was required to be calculated as per the provisions of Rule 2A and Rule 3 of

the Income Tax Rules, 1962. The assessing authority after giving notice to the assessee held that the assessee was in default on account of non-deduction of tax at source on salary and perquisites allowed by it for its employees. It is also revealed from the record that the assessee had provided its employees the leased accommodation and charged from them the standard rent fixed for each type of accommodation irrespective of stage o salary of employees entitled to that category of leased accommodation. The employees similarly situated made payment of rent in the same manner and to the same extent and the assessee took a plea that no concession was enjoyed by any employee within the meaning of Section 17 of the Income Tax Act, 1961 **(hereinafter referred to as the Act)** and no deductions were made by the Assessing Officer. It was further held by the assessing authority that the assessee has taken the accommodation on lease on higher rent and the same has been paid to its employee on the lower rent. The assessing authority concluded that the value of such concession in the matter of rent provided by the appellant to its employees was a perquisite in terms of the provisions of Section 17 of the Act and the value of the same was to be computed in accordance with Rules 2 & 3 of the Income Tax Act Rules, 1962. The assessing authority further calculated the short deduction of tax and also charged interest under Section 201 (1A). and the short deduction of tax was computed at Rs. 95,430/- and Rs. 95,325/- respectively for both the years.

4. Feeling aggrieved by the said order, the assessee preferred the appeal before the CIT (Appeals)

and the CIT (Appeals) while allowing the appeal observed that no perquisite value can be added in the hands of the assessee. It was further held that said concession cannot be termed as a perquisite acceptable under the Income Tax Act. Feeling aggrieved by the said order, the appellant/Department preferred an appeal before the ITAT. The ITAT also agreeing with the finding recorded by the CIT (Appeals) confirmed the order of the CIT (Appeals) and decided the matter in favour of the assessee. The Department had preferred this appeal before this Court and following two substantial questions of law arise for determination in these appeals:-

1. Whether on the facts and in the circumstances of the case of the learned ITAT was legally justified in holding that concessional accommodation facility provided by the employer to its employees cannot be construed to be perquisite?

2. Whether on the facts and in the circumstances of the case the learned ITAT was legally, justified in holding that no perquisite arose on account of concessional accommodation facility provide by the employer to its employees and the AO was not justified in charging interest under Section 201/201 (1A) of the I.T.Act?

5. We have heard learned counsel for the parties and perused the record.

6. It is not disputed before us that the employees of the assessee were in fact paying standard rent which has been fixed by the assessee to all his employees and all employees similarly situated as the other employees are making payment in the same manner and to same

extent as to other employees are doing. The parties had not disputed the facts as narrated above. Now the question remains for determination as to whether the concession given by the assessee to its employees is perquisite within the meaning of Section 17 of the Act is liable to be charged under the Income Tax Act. Section 17 (2) of the Act defines the "perquisites" as under:-

> **"17.** "For the purposes of sections 15 and 16 and of this section,-
>
> (2) "perquisite" includes-
> (i) the value of rent-free accommodation provided to the assessee by this employer;
> (ii) The value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer;
> (iii) The value of any benefit or amenity granted or provided free of cost or at concessional rate in any of the following cases:-
>
> (a) by a company to an employee who is a director thereof;
> (b) by a company to an employee being a person who has a substantial interest in the company;
> (c) by an employer (including a company) to an employee to whom the provisions of paragraphs (*a*) and *(b)* of this sub clause do not apply and whose income [under the head "Salaries (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds [fifty] thousand rupees:]

7. The question whether an employee is in occupation of an accommodation at a concessional rate depends upon the normal rent for the accommodation in occupation of the employees and the rent actually paid by the employee. If the employee is paying the rent which is the normal rent of the accommodation in the occupation of the employee and similar rent is also payable by the other employees similarly situated in the bank, it cannot be said that the employees were receiving any concession in the matter of rent. The assessee had not given any concession to the employees in the matter of rent. The other employees who had no concessional accommodation were paying the rent and the other officers to whom the concessional accommodation had been arranged by the assessee if they are paying the same rent to the assessee which other employees are paying, it cannot be said that it is a perquisite within the meaning of Section 17. The definition of the "perquisite" does not indicate that if the rent paid by the employee is less than standard, the difference will be deemed as perquisite.

8. It was contended on behalf of the revenue Department that under Rule 3 the assessee must be held to be enjoying the perquisite because the employees are paying the rent less than the leased amount and it is a concession in terms of Rule 3. Rule 3 has been framed in exercise of the power conferred by Section 295 (2)(c) of the Act. The aim and object of the said rule is to compute the value of the perquisite chargeable to tax. The assessing authority had first to come to the conclusion that the concessional accommodation was a perquisite as

defined under Section 17(2) which is a substantive law. The procedure as to how the perquisite will be computed for the computation of the income tax is provided under Rule 3. As such this rule relates to the procedure for computation of the tax.

9. The learned counsel for the assessee/respondent relied upon the case of **Indian Bank Officers' Association and others** *versus* **Indian Bank and others**, reported in **Income Tax Reports 1994, Vol, 209, page 72 (Calcutta High Court)** and **officers' Association, Bhilai Steel, Plant** *versus* **Union of India and others,** reported in **Income Tax Reports 1983, Vol. 139, page 937 (Madhya Pradesh High Court).**

10. We find that the case of the assess is squarely covered by the decision of the Calcutta High Court (supra) and Madhya Pradesh High Court (supra). The Madhya Pradesh High Court in its judgment has held as under:-

> "Sub-c1. (ii) of the definition of "perquisite" in s.17(2) extends the meaning of that term by including therein "the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer". It is "any concession in the mater of rent" which falls within this clause. If the employer gives no concession to the employee in the matter of rent, there can be no question of any perquisite. A case of concession in the matter of rent would arise when the rent normally payable for the accommodation is higher

than the rent paid. The definition of "perquisite" does not say that if the rent paid by the employee is less than 10 per cent of his salary, the difference will be deemed as perquisite. It is not uncommon that accommodation suiting the standard of the officers are not available and they have to occupy accommodations which are of lower category. The rent of such accommodation is low and if the rent paid in such a situation is less than 10 per cent of the salary (which is the rent normally payable for an accommodation of the category which should have been allotted to the officer), the difference cannot be treated as perquisite. Similarly, if the rent of an accommodation is fixed irrespective of the person who occupies it, the difference between 10 per cent of salary and the fixed rent paid cannot be said to be any perquisite. In these case it cannot be said that the officer was granted any concession in the matter of rent."

11. Following the above decision, the Calcutta High Court has held as under:-

"That the question of concession must be determined with reference to the nature of the accommodation provided, the normal rent payable in respect of such accommodation by other employees similarly situated and the actual rent paid by the assessee-employee concerned in this case it was undisputed that the petitioners were, in fact, paying the rent which had been fixed in accordance with the regulations and all employees

similarly situated as the petitioners were making payment of rent in the same manner and to the same extent as the petitioners were doing. It could not, therefore, be said that the petitioners were at all enjoying any concession within the meaning of section 17(2)(ii) of the Act. Moreover, the income-tax authorities themselves had written to various public sector, undertakings which were similarly situated as the Indian Bank to the effect that if an employee was provided with accommodation and standard rent as fixed by the appropriate authority was realized from the employee, then the question of perquisite did not arise. Therefore, income-tax was not leviable on the notional perquisite value of the accommodation."

12. We are completely in agreement with the decisions of Calcutta High Court and we confirm the order of the ITAT dated 01.08.2001 in all these appeals. Both the questions are decided in favour of the assessee.

13. All these appeals are dismissed. No order as to costs.

(J.C.S. Rawat, J.) 02.12.2005

(P.C. Verma, J.) 02.12.2005

P. Singh